

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 UNITED STATES OF AMERICA,

4 v.

16 CR 246 (JSR)

5 MATHIS JOSEPH,

6 Defendant.

Plea (by video)

7 -----x

8 New York, N.Y.
9 July 28, 2020
2:50 p.m.

10 Before:

11 HON. JED S. RAKOFF,

12 District Judge

13 APPEARANCES

14 AUDREY STRAUSS

15 Acting United States Attorney for the
Southern District of New York

16 BY: JORDAN ESTES

Assistant United States Attorney

17 MITCHELL C. ELMAN

18 Attorney for Defendant

1 (Case called)

2 THE COURT: This is United States v. Mathis Joseph.
3 Would counsel please identify themselves for the record.

4 MS. ESTES: Good afternoon, your Honor, Jordan Estes
5 for the government.

6 MR. ELMAN: Good afternoon, your Honor, Mitchell Elman
7 for Mr. Joseph. I hope all is well with you, sir.

8 THE COURT: Thank you.

9 Mr. Joseph is also here by video.

10 Let me first confirm, both with defense counsel and
11 Mr. Joseph personally, that after consultation Mr. Joseph has
12 consented to proceeding via video conference in this guilty
13 plea.

14 MR. ELMAN: Yes, your Honor. I discussed this in
15 detail with Mr. Joseph. I went through all the documents with
16 respect to the case and gave him the option as to whether he
17 wanted to appear personally or virtually. And both of us,
18 after discussing this, have agreed to appear virtually.

19 THE COURT: Mr. Joseph, is that correct?

20 THE DEFENDANT: Yes.

21 THE COURT: Let me also note that Chief Judge McMahon
22 of this Court has specifically found that felony pleas cannot
23 be conducted in person without seriously jeopardizing public
24 health and safety and, also, that in light of the age of this
25 case, proceeding with this case cannot be further delayed

without serious harm to the interests of justice.

Now, I received a copy of the sealed superseding indictment. I assume the government and the defense consents to it being unsealed at this time, is that correct?

MS. ESTES: Yes, your Honor. I believe we actually unsealed it about a month ago.

THE COURT: I'm sorry. I didn't pick that up. So that's fine.

Let me ask the defendant, is it your intention to withdraw your previously entered plea of not guilty and enter a plea of guilty to Count One of this indictment?

THE DEFENDANT: Yes.

THE COURT: I will put you under oath, so please raise your right hand.

(Defendant sworn)

THE COURT: Let me make sure you understand that because you are under oath, anything you say that is knowingly false could subject you to a prosecution for perjury or obstruction of justice.

You understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you read, write, speak, and understand English?

THE DEFENDANT: Yes, your Honor.

THE COURT: And how far did you go in school?

1 THE DEFENDANT: Graduated high school.

2 THE COURT: And have you ever been treated by a
3 psychiatrist or psychologist?

4 THE DEFENDANT: Yes.

5 THE COURT: When was that?

6 THE DEFENDANT: This was recently.

7 THE COURT: What was it that led to that treatment?

8 THE DEFENDANT: My arrest.

9 THE COURT: Have you ever been hospitalized for any
10 mental illness?

11 THE DEFENDANT: No.

12 THE COURT: Have you ever been treated or hospitalized
13 for alcoholism?

14 THE DEFENDANT: Yes, treated. I've had treatments,
15 yes.

16 THE COURT: Have you ever been treated or hospitalized
17 for drug addiction?

18 THE DEFENDANT: Yes.

19 THE COURT: So the problem you were discussing with
20 the psychiatrist, was this in the prison system or outside?

21 THE DEFENDANT: No. It was outside.

22 THE COURT: And you said it was for your addiction?

23 THE DEFENDANT: Yes.

24 THE COURT: Meaning your addiction to what?

25 THE DEFENDANT: Alcohol and drugs.

1 THE COURT: And what kind of pills were you taking?

2 THE DEFENDANT: Oxycontin.

3 THE COURT: In the last 24 hours, have you had any
4 alcohol or pills of any kind?

5 THE DEFENDANT: No.

6 THE COURT: Are you taking any kind of medication?

7 THE DEFENDANT: Right now, no.

8 THE COURT: Is your mind clear today?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you understand these proceedings?

11 THE DEFENDANT: Yes.

12 THE COURT: On the basis of the defendant's responses
13 to my questions and my observations of his demeanor, I find he
14 is fully competent to enter an informed plea at this time.

15 You have a right, Mr. Joseph, to be represented by
16 counsel at every stage of these proceedings.

17 Do you understand that?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: If at any time you can't afford counsel,
20 the Court will appoint one to represent you free of charge
21 throughout the proceedings.

22 Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: Mr. Elman, are you retained or appointed?

25 MR. ELMAN: I am retained, sir.

1 THE COURT: Mr. Joseph, have you had a full
2 opportunity to discuss this matter with Mr. Elman?

3 THE DEFENDANT: Yes.

4 THE COURT: Are you satisfied with his representation
5 of you?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Now, you were charged in indictment 16 CR
8 246 with conspiracy to distribute oxycodone, and you previously
9 entered a plea of not guilty to that charge. But I understand
10 you now wish to plead guilty, is that right?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Before I can accept any plea of guilty, I
13 need to make certain, among other things, that you understand
14 the rights that you will be giving up if you plead guilty. I
15 want to go over with you now the rights that you will be giving
16 up.

17 Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: You should have a right to a speedy and
20 public trial by a jury on the charge against you.

21 Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: Second, if there were a trial, you would
24 be presumed innocent and the government would be required to
25 prove your guilt beyond a reasonable doubt before you could be

convicted of any charge.

Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Third, at the trial you would have the right to be represented by counsel once again. If at any time you could not afford counsel, the Court would appoint one to represent you free of charge throughout the trial and all other proceedings.

Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Fourth, at the trial you would have the right to see and hear all the witnesses and other evidence against you, your attorney could cross-examine the government's witnesses and object to the government's evidence and could offer evidence on your own behalf, if you so desired, and could have subpoenas issued to compel the attendance of witnesses and offer evidence on your own behalf.

Do you understand all that?

THE DEFENDANT: Yes.

THE COURT: Fifth, at trial you would have the right to testify if you wanted to, but no one could force you to testify if you did not want to. No suggestion of guilt could be drawn against you simply because you chose not to testify.

Do you understand that?

THE DEFENDANT: Yes, your Honor.

1 THE COURT: At a trial, even if you were convicted,
2 you would have the right to appeal your conviction.

3 Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: Now, do you understand that if you plead
6 guilty, you will be giving up each and every one of the rights
7 we just discussed.

8 Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: Turning to the superseding indictment,
11 does defense counsel want Count One read again here, or do you
12 waive the reading?

13 MR. ELMAN: We waive the reading, your Honor.

14 THE COURT: Generally, Mr. Joseph, this charges you
15 with an agreement with at least one other person, called a
16 conspiracy, to distribute oxycodone, and you have gone over
17 that indictment with your lawyer, yes?

18 THE DEFENDANT: Yes.

19 THE COURT: And you understand the charge against you,
20 yes?

21 THE DEFENDANT: Yes.

22 THE COURT: Now, the maximum punishment you face, if
23 you plead guilty to this charge, is 20 years' imprisonment,
24 plus up to lifetime supervised release to follow any term of
25 imprisonment, with a mandatory minimum term of three years'

1 supervised release, and a maximum fine of whichever is
2 greatest, either \$1 million or twice the amount of money
3 derived from the conspiracy or the loss to any victims of the
4 conspiracy, plus a \$100 mandatory special assessment.

5 Do you understand those are the maximum and mandatory
6 minimum punishments if you plead guilty?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Now, at this point in time I have no idea
9 what sentence I will impose if you plead guilty, but in that
10 connection I've been furnished with a letter agreement which we
11 will mark as Court Exhibit 1 to this proceeding. And it takes
12 the form of a letter, dated June 22, 2020, from the government
13 to defense counsel, and it appears -- there I have the
14 original -- it appears that you signed it yesterday, is that
15 right?

16 THE DEFENDANT: Yes.

17 THE COURT: Before signing it, did you read it?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Did you go over it with your lawyer?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Did you understand the terms of the
22 agreement?

23 THE DEFENDANT: Yes.

24 THE COURT: And did you sign it in order to indicate
25 your agreement to the agreement.

1 THE DEFENDANT: Yes.

2 THE COURT: This letter agreement, which we have now
3 marked as Court Exhibit 1, is binding between you and the
4 government, but it is not binding on me. It's not binding on
5 the Court.

6 Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: For example, with respect to sentencing,
9 one of the things that is set forth in this letter is a
10 stipulated guidelines range. Guidelines are certain laws that
11 recommend, but do not require, THE imposition of a particular
12 range of imprisonment, and they are not binding on me, but I
13 will consider them. And in this agreement you and the
14 government stipulated to a guideline range of 46 to 57 months.

15 Do you recall that?

16 THE DEFENDANT: Yes.

17 THE COURT: Now, again, that's not binding on me. I
18 could go higher or lower or anywhere in between. Regardless of
19 where I come out, if you plead guilty, you will still be bound
20 by my sentence.

21 Do you understand that?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: More generally, do you understand that if
24 anyone has made any promise or prediction or estimate or
25 representation to you of what your sentence will be in this

1 case, that person could be wrong. Nevertheless, if you plead
2 guilty, you will still be bound by my sentence.

3 Do you understand?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Does the government represent that this
6 letter agreement that we have now marked as Court Exhibit 1
7 represents the entirety of any and all agreements between the
8 government and Mr. Joseph?

9 MS. ESTES: Yes, your Honor.

10 THE COURT: By the way, Mr. Joseph, under this
11 agreement, if I do sentence you within the stipulated guideline
12 range or below, you have agreed with the government not to
13 appeal your sentence.

14 Do you understand that?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Mr. Elman, is this letter agreement the
17 entire agreement between you and the government?

18 MR. ELMAN: It's a six-page agreement. This is the
19 agreement.

20 THE COURT: Mr. Joseph, you agree this is the sole
21 agreement between you and the government?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Mr. Joseph, other than the government, has
24 anyone else made any kind of promise or anything to induce you
25 to plead guilty?

1 THE DEFENDANT: No.

2 THE COURT: Has anyone threatened or coerced you to
3 plead guilty?

4 THE DEFENDANT: No.

5 THE COURT: Does the government represent that if this
6 case were to go to trial, it could, through competent evidence,
7 prove every essential element of this offense beyond a
8 reasonable doubt?

9 MS. ESTES: Yes, your Honor.

10 THE COURT: Does defense counsel know of any valid
11 defense that would likely prevail at trial or any other reason
12 why his client should not plead guilty?

13 MR. ELMAN: No, your Honor.

14 THE COURT: Mr. Joseph, tell me in your own words what
15 it is you did that makes you guilty of this crime.

16 THE DEFENDANT: Say that again, your Honor.

17 THE COURT: Tell me what you did that makes you guilty
18 of this crime.

19 THE DEFENDANT: Purchasing Oxycontin.

20 THE COURT: Let's talk about the period between 2014
21 and October 2015. Did you, during that period, agree to
22 distribute oxycodone?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: What were you getting out of it?

25 THE DEFENDANT: I was purchasing mostly for my own

1 use, and I might have gave it to friends.

2 THE COURT: Did you sell any?

3 THE DEFENDANT: I might have sold some to my friends.

4 THE COURT: Did you or didn't you?

5 THE DEFENDANT: I was purchasing.

6 THE COURT: I know you were purchasing. But my
7 question is, did you, after your purchase, sell some of the
8 oxycodone to other people?

9 THE DEFENDANT: Yes.

10 THE COURT: And when you purchased from any of these
11 people, did you discuss the fact that you might sell some of it
12 to other people?

13 THE DEFENDANT: Yes.

14 THE COURT: And where did all this occur?

15 THE DEFENDANT: In Brooklyn, New York.

16 THE COURT: Let me ask the government. What about the
17 venue issue?

18 MS. ESTES: Yes, your Honor. The government would
19 proffer that a coconspirator would travel through Manhattan to
20 get to Brooklyn to conduct the oxycodone sale.

21 THE COURT: When you did all this, when you sold this
22 as part of an agreement with others, you knew what you were
23 doing was illegal and wrong, Mr. Joseph?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Is there anything else regarding the

1 factual portion of the allocution that the government wishes
2 the Court to inquire about?

3 MS. ESTES: No, your Honor. I would just also proffer
4 that when the defendant was purchasing the oxycodone he was
5 purchasing distribution-level quantities.

6 THE COURT: So like what?

7 MS. ESTES: Like hundreds of oxycodone pills.

8 THE COURT: Is that right, Mr. Joseph?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: You clearly had in mind selling at least
11 some of it to others or distributing at least some of it to
12 others, yes?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Is there anything else regarding any
15 aspect of the allocution that either counsel wishes the Court
16 to further inquire about before I ask the defendant to formally
17 enter his plea?

18 Anything else from the government?

19 MS. ESTES: No, your Honor.

20 THE COURT: Anything from defense counsel?

21 MR. ELMAN: No, your Honor.

22 THE COURT: Mr. Joseph, in light of everything we have
23 now discussed, how do you plead to Count One of indictment S1
24 16 CR 246, guilty or not guilty?

25 THE DEFENDANT: Guilty.

1 THE COURT: Because the defendant has acknowledged his
2 guilt as charged, because he has shown that he understands his
3 rights, and because his plea is entered knowingly and
4 voluntarily supported by an independent basis in fact
5 containing each of the essential elements of the offense, I
6 accept his plea and adjudge him guilty of Count One of the
7 aforesaid indictment.

8 Mr. Joseph, the next stage in this process is that the
9 probation office will prepare what's called a presentence
10 report to assist me in determining sentence. As part of that
11 you will be interviewed by the probation officer. You can have
12 your lawyer present to advise you of your rights, but under my
13 practices you have to personally answer the questions put to
14 you by the probation officer.

15 Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: After that report is in draft form, but
18 before it's in final form, you and your lawyer and also
19 government counsel will have a chance to review it and offer
20 suggestions, corrections, and additions directly to the
21 probation officer, who will then put the report in final to
22 come to me.

23 Independent of that, counsel for both sides are hereby
24 given leave to submit directly to the Court in writing any and
25 all materials bearing on any aspect of sentence, provided that

those materials are submitted no later than one week before
sentence.

I'll put the down sentence down for, Linda?

THE DEPUTY CLERK: Monday, October 19, at 4.

THE COURT: October 19 at 4 p.m.

Anything else we need to take up today?

MS. ESTES: Nothing from the government. Thank you,
your Honor.

MR. ELMAN: Nothing from the defense.

Did you say October 19, 2020, at 4 p.m., right?

THE COURT: Correct.

MR. ELMAN: Thank you very much.

THE COURT: Thanks a lot.

(Adjourned)